

UNITED STATES OF AMERICA,

Plaintiff,

v.

CBS CORPORATION, SPC RESIDUAL, LLC,  
and DONALD R. WISHARD, O/B/O THE  
ESTATE OF SARAH A. CULP

Defendants.

Civil Action No.

Plaintiff, the United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), alleges as follows:

1. This is a civil action brought pursuant to Sections 107(a), and 113(g)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, (“CERCLA”), 42 U.S.C. §§ 9607(a), 9613(g)(2), for recovery of environmental response costs incurred by the United States in connection with the Shriver’s Corner Superfund Site (“the Site”), located in Straban Township, Adams County, Pennsylvania. The United States also seeks a declaratory judgment on liability that will be binding on any subsequent action to recover further response costs.

### JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 42 U.S.C. §§ 9607, and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in the Middle District of Pennsylvania pursuant to 42 U.S.C. § 9613(b) and 28 U.S.C. § 1391(b)(2) and (c).

### DEFENDANTS

4. Defendant CBS Corporation ("CBS") is a corporation under the laws of the State of Delaware, and is successor by merger to the company formerly known as Viacom, Inc., which was formerly known as the Westinghouse Electric Corporation ("Westinghouse").

5. Defendant SPC Residual, LLC, ("SPC") is a corporation under the laws of the State of Delaware, and is successor by assignment to Susquehanna Pfaltzgraff Co., which was formerly known as the Pfaltzgraff Company ("Pfaltzgraff").

6. Defendant Estate of Sarah A. Culp ("the Estate") is a decedent's estate, and Defendant Donald R. Wishard is its Executor ("Executor"). Upon information and belief, the Estate of Sarah A. Culp has not been settled, and therefore the Estate is the current owner of that portion of the Site known as "the Culp Area."

### THE SUPERFUND SITE

7. The Site is located along State Route 394, also known as Shriver's Corner Road, in a rural area approximately five miles north of Gettysburg, Pennsylvania.

8. The Site consists of "the Shealer Area," which is comprised of approximately two acres located south of State Route 394, and "the Culp Area," which is comprised of approximately eight acres located north of State Route 394.

9. During the period from approximately 1969 to 1980, Westinghouse contracted with one Frederick M. Shealer to transport and dispose of industrial waste generated by Westinghouse, some of which contained hazardous substances.

10. Waste containing, *inter alia*, trichloroethene ("TCE"), 1,1,1 trichloroethane ("TCA"), phenol, toluene, ethyl-benzene, cadmium, chromium, lead, selenium, silver, mercury, copper, nickel, and zinc, was generated at an elevator manufacturing plant owned and operated by Westinghouse in Cumberland Township, Adams County, Pennsylvania ("Westinghouse Elevator Facility").

11. Frederick M. Shealer and/or his agents transported wastes containing hazardous substances from the Westinghouse Elevator Facility to the Site, and disposed of those wastes at the Site.

12. During the period from approximately 1975 to 1983, Pfaltzgraff contracted with Frederick M. Shealer to transport and dispose of industrial waste generated by Pfaltzgraff, some of which contained hazardous substances.

13. Waste containing, *inter alia*, lead, copper, chromium, and nickel, was generated at two ceramics manufacturing plants owned and operated by Pfaltzgraff in Pennsylvania ("Aspers and Bendersville Facilities").

14. Frederick M. Shealer and/or his agents transported wastes containing hazardous substances from the Aspers and Bendersville Facilities to the Site and disposed of those wastes at the Site.

15. In January 1984, EPA and the Commonwealth of Pennsylvania conducted an inspection of the Site and discovered numerous drums containing hazardous substances, in various stages of deterioration.

16. The hazardous substances found at the Site include, but are not limited to: paint, paint sludges, and solvents, containing TCE, TCA, toluene, phenol, ethyl-benzene, lead, cadmium, chromium, copper, mercury, nickel, selenium, silver, and zinc.

17. EPA issued an Administrative Order on Consent in 1984, requiring Westinghouse to undertake the removal of drums and contaminated surface soil from the Site.

18. In September 1986, and in March 1987, EPA issued Administrative Orders requiring Westinghouse to perform additional response actions at the Site.

19. EPA conducted additional response actions in 1991, to remove drums and a disposal bin containing hazardous materials from the Site.

20. EPA issued a Record of Decision ("ROD") in September 1995, which determined that the actual or threatened releases of hazardous substances from the Site could present an imminent and substantial endangerment to public health, welfare, or the environment, and set forth the selected remedial action for the Site. In summary, the remedy provided for: (1) an alternative water supply to the affected community, (2) construction and operation of a groundwater extraction and on-Site treatment system, (3) excavation and disposal of contaminated soil and stream sediments, and (4) periodic groundwater monitoring.

21. In July 1997, EPA issued a Unilateral Administrative Order to Westinghouse and the Pfaltzgraff Company, to implement the remedial action set forth in the ROD. Remedial action commenced on-Site on July 6, 1998.

### CERCLA LIABILITY

22. The Site, including its surface and sub-surface soils and water, is a “facility,” within the meaning of Sections 101(9) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(9) and 9607(a).

23. The substances contaminating soils and waters at the Site, including TCE, TCA, phenol, toluene, ethyl-benzene, cadmium, chromium, lead, selenium, silver, mercury, copper, nickel, and zinc, are “hazardous substances,” within the meaning of Sections 101(14), 101(22), 104(a), and 107(a) of CERCLA, 42 U.S.C. §§ 9601(14), 9601(22), 9604(a), and 9607(a).

24. There was a “release” or “threatened release” of hazardous substances into the environment at and from the Site, within the meaning of Sections 101(8), 101(14), 101(22), 104(a), and 107(a) of CERCLA, 42 U.S.C. §§ 9601(8), 9601(14), 9601(22), 9604(a), and 9607(a).

25. Hazardous substances were “disposed of” at the Site, within the meaning of Sections 101(14), 101(29) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(14), 9601(29) and 9607(a).

26. Each of the Defendants is a “person,” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

27. Defendants CBS and SPC bear liability as the corporate successors to persons who “by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person” at the Site, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

28. Defendant Donald R. Wishard on behalf of the Estate bears liability as a person who is “the owner and operator of a vessel or a facility,” within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1) and as a “person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of” within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

#### COUNT I

29. The allegations of the foregoing paragraphs are incorporated herein by reference.

30. The United States has incurred and will continue to incur response costs, as defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), and authorized by Section 104 of CERCLA, 42 U.S.C. § 9604, as a result of the release or threatened release of hazardous substances at the Site.

31. The response costs were incurred and will be incurred by the United States in a manner not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

32. Defendants CBS and SPC are liable for response costs incurred and to be incurred by EPA in connection with the Site, pursuant to Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

33. Defendant Donald R. Wishard on behalf of the Estate is liable for response costs incurred and to be incurred by EPA in connection with the Site, pursuant to Sections 107(a)(1) and (a)(2) of CERCLA, 42 U.S.C. §§ 9607(a)(1) and (a)(2).

#### COUNT II

34. The allegations of the foregoing paragraphs are incorporated herein by reference.

35. The United States is entitled to a declaratory judgment on liability for response

costs or damages, which will be binding on any subsequent action to recover further response costs or damages, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), and the Declaratory Judgment Act, 28 U.S.C. § 2201.

**WHEREFORE**, the United States respectfully requests judgment as follows:

- A. Judgment against the Defendants in the total amount of all response costs incurred by the United States with respect to the Site, including pre-judgment interest;
- B. A declaratory judgment establishing Defendants' liability that will be binding on any subsequent action or actions to recover further response costs relating to this Site; and
- C. Such other relief as the Court deems just and proper.

Respectfully submitted,

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